IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

OP.No. 22368 of 2000(K)

PETITIONER:

---

1. M.C.SELINA, WO.O.K.JOSE, OLARI HOUSE, MUKKATTUKARA, P.O.NETTISSERY, TRICHUR DIST.

2. HARISHKUMAR, S/O.P.N.MENON, KODANAD DESOM, KUNNATHUNADU TALUK,. ERNAKULAM DIST.

3. P.A.RADHAKRISHNAN, S/O.P.K.AYYAPPAN, POOKKOTTIL HOUSE, P.O.PERAMANGALAM, TRICHUR DIST.

4. V.N.JAYARAJ, S/O.V.R.NARAYANAN, VELEKKAT HOUSE, PANAMUCK DESOM, KANIMANGALAM, TRICHUR DIST.

5. MARIA ANITHA ISABELLA, W/O.LATE JOSHY THARU, ELENJIKKAL HOUSE, CHURAKKATTUKARA, PUZHAKKAL, TRICHUR.

BY ADV. SRI.N.P.SAMUEL
SRI.B.K.PURUSHOTHAMAN

RESPONDENTS:

---

1. STATE OF KERALA, REP. BY COMMISSIONER AND SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, TRIVANDRUM.

2. THE PHARMACEUTICAL CORPORATION-(INDIAN MEDICINES) KERALA LTD., TRICHUR, REP. BY THE MANAGING DIRECTOR, SHORNUR ROAD, TRICHUR-680 001.

3. THE SECRETARY, DEPARTMENT OF BUREAU OF PUBLIC ENTERPRISES, PLANNING AND ECONOMIC AFFAIRS, GOVT. OF KERALA, TRIVANDRUM.

4. THE BOARD OF DIRECTORS, REP. BY CHAIRMAN, THE PHARMACEUTICAL CORPORATION-(INDIAN MEDICINES) KERALA LTD., SHORNUR ROAD, TRICHUR-680 001.

ADDL. RESPONDENTS:

5. E.SHIBU, MANAGER, THE PHARMACEUTICAL CORPORATION (I.M.) KERALA LTD., "OUSHADHI", SHORNUR ROAD, TRICHUR-680 001.

6. FIJI C.DAVID, . DO. .DO.

7. MR.G.RAJESH, .DO. "OUSHADHI", KUTTANELLOOR, TRICHUR-680 014.

8. MR.R.SURESH KUMAR, .DO. SHORNUR ROAD, TRICHUR-680 001.

R2&4 BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SRI.V.KRISHNA MENON
R1&3 BY GOVERNMENT PLEADER
R5 TO 8 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/03/2007, ALONG WITH OP NO. 35622 OF 2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.37668/2000 & I.A. NOS.11263 & 13823/2005 IN O.P. NO.22368/2000

DISMISSED:

20.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF PAY REVISION ORDER DT.22.7.1977 ISSED BY R2.

P2: TRUE COPY OF APPOINTMENT ORDER OF 1ST PETITIONER DT.3.8.1983.

P2(a): .DO. DT.12.3.1985 OF 2ND PETITIONER ISSUED BY R2.

P2(b): .DO. DT.18.4.1985 OF 3RD PETITIONER.

P2(c): .DO. DT.16.4.1990 OF 4TH PETITIONER ISSUED BY R2.

P2(d): .DO. DT.17.4.90 OF 5TH PETITIONER .DO.

P3: PHOTOCOPY OF ADVERTISEMENT PUBLISHED IN MATHRUBHOOMI DAILY DT.10.6.2000 BY R2.

P4: PHOTOCOPY OF APPOINTMENT ORDER OF SHIBU.E. (ADDL. R5) AS PER NO.E1.223/2000 DT.10.8.2000 ISSUED BY R2.

P5: .DO. OF FIGI C. DAVID (ADDL. R6) ISSUED BY R2.

P6: .DO. OF RAJESH G., (ADDL. R7) .DO.

P7: .DO. SURESHKUMAR R., (ADDL. R8) .DO.

P8: PHOTOCOPY OF EXPERIENCE CERTIFICATE OF MR.G.RAJESH ISSUED FROM ALTIMA TECHNOLOGIES PVT. LTD. DT.4.6.2000.

P9: PHOTOCOPY OF LETTER DT.17.1.2006 ISSUED BY ASST. REGISTRAR OF COMPANIES, KERALA, COCHIN.

P9(IN I.A. NO.13503/2006): TRUE EXTRACT PHOTOCOPY OF STATEMENT OF MARKS GOT BY RESPONDENTS 5 TO 8 IN THE INTERVIEW CONDUCTED BY R2.

P10: TRUE EXTRACT PHOTOCOPY OF THE MARKS OBTAINED IN THE WRITTEN TEST & INTERVIEW OF THE CANDIDATES CONDUCTED AS PER EXT.P1 BY R2.

P11: PHOTOCOPY OF LIST OF CANDIDATES APPEARED IN THE WRITTEN TEST & INTERVIEW CONDUCTED BY R2.

P12: PHOTOCOPY OF RESOLUTION PASSED BY R2 ON 3.3.1990.

P13: PHOTOCOPY OF PROMOTION ORDER OF 1ST PETITIONER ISSUED BY R2 ON 4.7.96.

P13(a): PHOTCOPY OF PROMOTION ORDER OF 3RD PETITIOENR DT.29.11.96.

P13(b): .DO. 5TH PETITIONER DT.2.7.98.

RESPONDENT'S EXHIBITS:

R4(a): PHOTOCOPY OF NOTIFICATION DT.24.1.1984.

R5(a): TRUE COPY OF THE CERTIFICATE DT.16.8.2005 ISSUED BY THE MANAGER, KOLLAM DIARY.

R5(b): TRUE COPY OF G.O. DT.29.4.1989.

R6(a): TRUE COPY OF THE D.O. LETTER DT.27.7.2002 FROM SMT.T.G.LEELAMMA, JOINT SECRETARY, KERALA P.S.C., ADDRESSED TO SRI.K.K.NARAYANAN NAMBOODIRI, JOINT SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT.

R6(b): TRUE COPY OF D.O. LETTER DT.23.11.2002 FROM SRI.K.K.NARAYANAN NAMBOOTHIRI, JOINT SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, ADDRESSED TO SRI.N.GOPINATHAN, MANAGING DIRECTOR, OUSHADHI.

R6(c): TRUE COPY OF D.O. LETTER DT.7.6.2003 .DO.

R6(d): TRUE COPY OF D.O. LETTER DT.30.6.2003 FROM SRI.K.RAMAMURTHY, SECRETARY TO GOVT., HEALTH AND FAMILY WELFARE DEPARTMENT, ADDRESSED TO SRI.N.GOPINATHAN, IFS, MANAGING DIRECTOR, OUSHADHI.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....

O.P. Nos.22368/2000 & 35622/2001

.....

Dated this the 20th day of March, 2007.

JUDGMENT

The petitioners are working in the cadre of Assistant Manager in various Departments of the second respondent-company. Challenge is against Service Rules prescribed by second respondent-company which was approved by Government of Kerala by order dated 8.6.1998 whereunder petitioners have become ineligible for further promotion to the cadre of Manager for want of qualification in as much as all the petitioners have passed only upto SSLC whereas the qualification required under the new Rules is minimum gradation, MBA, CA etc. depending on the department to which Manager is to be appointed.

2. I heard counsel for the petitioners, Standing Counsel for second respondent and counsel for the contesting respondents who were recruited as Managers under the new Rules after filing of the writ petition. Even though O.Ps. are filed in 2000 and 2001, no stay was granted against the proposed appointments and therefore, additional respondents were appointed during pendency of O.Ps. as Managers and they are continuing as such. However, by virtue of the interim order of this court, their appoints

were made subject to result of the O.Ps.

3. The second respondent is presently a Government company under the control of State Government engaged in manufacture and sale of ayurvedic medicines and is also rendering medical services. The unit was initially started as a co-operative society which was acquired by the Government in 1976. Later in 1979 Government formed the second respondent-company to take over the undertaking of the society and eversince the operations are carried on by the company. Petitioners and several others who are only SSLC were recruited at a time when the company had only limited operations. The various posts available with the second respondent were the same as available under the byelaws of the society which was taken over by the Government. Posts available were Accountants, Clerks, Store Keepers, Depot Keepers, Attenders, Chief Stores and Purchase Officers. The qualification for all these posts were only SSLC with co-operative training. Different qualifications were required only for Chief Stores and Purchase Officers and Physicians. All the petitioners had only SSLC as qualification and all of them were systematically promoted from Lower Division to Upper Division Clerks and later to the cadre of Assistant Managers under the old Rules. In fact promotions were admittedly given based on the promotion policy of the

society which is contained in clause 26 of the byelaw of the society pertaining to service conditions which provides that promotions to higher posts in the technical and non-technical cadre should be made by the Executive Committee ordinarily according to strict seniority. The case of the petitioners is that higher posts at all levels should be filled up based on seniority as was done until impugned Rules came into force. The impugned notifications issued prescribing educational qualification for appointment to the cadre of Manager are challenged by the petitioners on the ground that all vacant posts of Managers should be filled up based on existing Rules i.e. by promotion from lower cadre without the requirement of educational qualification prescribed under the new Rules. Counsel for the petitioners has relied on Full Bench decision of this court in VARGHESE & OTHERS V. STATE OF KERALA & OTHERS (1981 KLT 458) wherein this court has held that qualification required for promotion should be considered as on the date of arising of vacancy. According to the petitioners, the decision of this court clearly indicates that vacancies of Managers available in the second respondent-company as on date of coming into force of the new Service Rules should be filled up by promotion as was done prior to the introduction of the Service Rules. Counsel for the second respondent and counsel for the additional respondents contended that recruitment under the

new Rules was approved by Government on 8.6.1998 and no appointment to the cadre of Manager can be made subsequent to the coming into force of the Rules other than by following the Rules. In other words, those who do not have the required qualification under the new Rules are not eligible for promotion, even though they may occupy the post of Assistant Manager presently. Therefore, the question to be considered is whether second respondent is free to frame Service Rules prescribing qualification for various posts in the company. On going through the Service Rules I find direct recruitment by the company itself is provided only in the Executive cadre. Clause 2 of the Recruitment Rules provides for recruitment to all levels upto Assistant Manager by PSC. The question to be considered is whether the second respondent-company is free to frame Service Rules for recruitment and for promotions and if so, whether such Rules should be applied for recruitments made at all levels subsequent to commencement of the Rules. If the Rules are applicable, petitioners are not eligible for promotion to the post of Manager because they don't have the required educational qualification under the Rules prescribed by the second respondent with approval of the Government. Even though the new recruitment Rules provide for direct recruitment and promotion, educational qualification such as degree in the concerned subject and in some cases

Management Degree is compulsory. The case of the petitioners is that educational qualification should not apply to them because promotions to Manager's post were being made without the educational qualification presently prescribed. I do not think this argument can be accepted because the earlier recruitment Rules did not contain any provision for promotion to the post of Managers. In fact promotions were made to the cadre of Manager and similar posts by decision of the Executive Committee without any Rules to back up the same. If the contention of the petitioners is to be accepted, then the company will have to wait for retirement of all the employees to bring the Rules into force. In fact what the Rule prohibits is further promotions from existing post and none of the petitioners have a case that they are disqualified from holding the present post of Assistant Managers for want of qualification prescribed under the new Rules. The prayer in the O.Ps. is to dispense with the educational qualification prescribed in the new Rules for petitioners for promotion to the cadre of Manager. Admittedly there was no Rule entitling those in service to go on promotion upto the cadre of Manager, even though appointments have been made in the absence of Rule upto the cadre of Manager without any qualification for the said post. However, this does not mean that second respondent is perpetually barred from prescribing qualification for the

higher post of Manager. So long as petitioners are not disqualified to continue in the post they are holding, I see no justification for their opposing the qualification prescribed for the post of Manager. In the circumstances, I do not find any ground to interfere with the Rules based on which additional respondents are recruited as Managers. This would only mean that petitioners have reached a stage wherefrom they will not get further promotion to the cadre of Manager as they do not have the qualification required for such promotion. So long as the Rules do not suffer from any illegality or discrimination, no interference is called for. The O.Ps. are accordingly dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms